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Proposed programme budget for the biennium 2014-2015

Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Thirteenth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2014-2015

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General (A/68/532) in which he provides details on the progress achieved by the Extraordinary Chambers in the Courts of Cambodia, gives an update on the financial crisis facing both the international and national components of the Chambers and seeks the approval by the General Assembly of a subvention of up to $51.1 million for the period from 1 January 2014 to 31 December 2015 from the regular budget of the United Nations. During its consideration of the report, the Committee met representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 3 December 2013.

II. Background

2. In its resolution 57/228 A on the Khmer Rouge trials, the General Assembly welcomed the efforts of the Secretary-General and the Government of Cambodia towards the establishment of Extraordinary Chambers within the existing courts structure of Cambodia, with international assistance, for the prosecution of crimes committed during the period of Democratic Kampuchea. Subsequently, the Assembly approved, in its resolution 57/228 B, an agreement that regulated the cooperation between the United Nations and the Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975

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to 6 January 1979. The Assembly also decided, in paragraph 3 of that resolution, that the expenses of the Extraordinary Chambers would be defrayed by the United Nations in accordance with the relevant provisions of that agreement and would be borne by voluntary contributions from the international community.

3. In 2005, the Secretary-General reported to the General Assembly that sufficient contributions and pledges had been received to fund the international staffing of the Extraordinary Chambers and their operations for a sustained period of time (A/60/565, para. 3). The above-mentioned agreement between the United Nations and the Government of Cambodia thus entered into force on 29 April 2005. Further funding was mobilized from 2006 to 2011 to support the operations of the international component (A/68/532, para. 28). Since 2005, the Secretary-General has issued two reports on the Khmer Rouge trials in which he has provided updates on the progress achieved towards establishing and operating the Chambers (A/62/304 and A/67/380).

4. The Extraordinary Chambers comprise both national and international components that are separately financed. The Government of Cambodia is responsible for the salaries of Cambodian judges and local personnel, while the United Nations is responsible for those of the international judges and international personnel, pursuant to articles 15 and 16 of the above-mentioned agreement.

5. In paragraph 66 of his report of 2012 on the Khmer Rouge trials (A/67/380), the Secretary-General indicated that the international component of the Extraordinary Chambers was facing an acute funding shortfall that could jeopardize the future operations of the Chambers. The General Assembly, by its decision 67/539, took note of that report. In his most recent report, the Secretary-General states that, while the national component of the Chambers was for the most part funded during 2012, it experienced a serious shortfall in pledges for 2013, creating a funding crisis of greater severity than that of the international component (A/68/532, para. 31).

6. Subsequently, the Secretary-General, in letters to the President of the General Assembly and to permanent representatives dated August 2013, indicated that the Extraordinary Chambers were on the brink of financial failure and that the voluntary funding mechanism was not sustainable, encouraging the international community to bring the operations of the Chambers onto a secure financial footing (A/68/532, summary). The Chef de Cabinet of the Secretary-General has also written to the principal donors group and the Deputy Prime Minister of Cambodia concerning the coverage of the national component costs, which provided the basis for two reimbursable loan arrangements between the United Nations and the Government of Cambodia (see paras. 24-28 for the Advisory Committee's comments on these arrangements).

7. In his report, the Secretary-General indicates that the effective functioning of the Extraordinary Chambers has been jeopardized by significant and persistent financial insecurity, resulting in two national staff walkouts and various resignations that, in turn, threaten judicial operations and prolong their timeline (A/68/532, para. 3). He points out that the financial crisis of the Chambers has become chronic, continuing throughout 2013. Owing to uncertainties over whether sufficient funds would be available to meet salary obligations for international staff, a recruitment freeze has been in effect since June 2012 and staff are extended in three-month increments (ibid., para. 30). He further states that, given the advanced age and

deteriorating capacities of the accused, the lack of financial resources could frustrate the delivery of justice (ibid., para. 37). This would, in his view, be a serious setback to the international community's fight against impunity (ibid., para. 45).

III. Current financial position

8. The financial status of the Extraordinary Chambers is described in the annex to the report of the Secretary-General, together with the indicative resource requirements for both the international and national components, disaggregated by component and funding availability. The table below provides a summary of the financial status of both components. It is indicated that the figures for 2014-2015 are subject to change pending review and approval by the group of interested States (A/68/532, annex, financial status of the Chambers, footnote (c)). The Advisory Committee was informed, upon enquiry, that, at the time of its consideration of the report of the Secretary-General, the budget proposal for 2014-2015 was with the principal donors group for review and an approved budget was expected by mid-December 2013.

Financial status of the Chambers

(Millions of United States dollars)

Component	*International: United Nations Assistance to the Khmer Rouge Trials*	*National: Cambodia*
Income received from 2005 to 2012	132.7	41.8
Expenditure from 2005 to 2012	131.2	42.1
Fund balance as at 31 December 2012	1.5	(0.3)
Contributions received and outstanding pledges for 2013[a]	23.0	6.3
Expenditure from 1 January 2012 to 30 September 2013	19.3	5.2
Estimated expenditure from 1 October 2012 to 31 December 2013	5.7	2.3
Projected cash shortfall as at 31 December 2013	(0.6)	(1.6)
Estimated requirements for 2014[b]	24.4	6.4
Estimated requirements for 2015[b]	22.0	6.0

[a] These figures do not include any additional amounts pledged to cover 2013 expenditure at the pledging conference held on 7 November.

[b] These figures exclude amounts pledged for the period 2014-2015.

9. The Secretary-General forecasts a funding shortfall for the international component of $0.6 million for 2013 and $42.3 million for 2014-2015 (A/68/532, para. 39). For the national component, he indicates that a cash shortfall of $1.6 million remains for 2013, the Secretariat's efforts to have pledges redirected to that component notwithstanding. While funding from the Government of Cambodia was forecasted to be $3.6 million for the period 2014-2015, the funds were restricted to operational costs rather than national staff costs. Given that there is only one bilateral pledge expected for the period 2014-2015 to support the specific functions of the Victims Support Section of the Extraordinary Chambers, a significant pledging shortfall for the national component is anticipated (ibid., para. 40).

10. Subsequent to the issuance of the report of the Secretary-General, the Advisory Committee notes that a pledging conference was held on 7 November 2013 to seek funding support for both components of the Extraordinary Chambers for the period 2014-2015. Upon enquiry, the Committee was informed that representatives of some 15 Member States attended the conference and that pledges totalling $10.3 million were announced for the international component, while $3.3 million was announced by the Government of Cambodia for the national component. A summary of outstanding and tentative pledges is provided in the annex to the present report. For the international component, the Committee was informed that, of the total amounts pledged, $2,869,256 represented new pledges. The Committee was also informed that, assuming receipt of those funds in 2013, the projected carry-forward balance would amount to $2.35 million, rather than the projected shortfall of $0.6 million reflected in the report of the Secretary-General. For the national component, the pledge announced is $300,000 less than the figure projected by the Secretary-General. The Committee was also informed, however, that the Government of Cambodia had decided to provide $1.8 million as a bridging fund to cover staffing costs from September to the end of 2013.

11. On the international side, the Secretary-General indicates that, based on the pattern of contributions during 2012-2013, it is expected that there will be insufficient fund balances available at any given time to ensure reasonable duration of staff contracts. Furthermore, the operational reserve that had accumulated since the court's inception was fully depleted in 2012 to meet staff payroll costs and remains at zero (A/68/532, para. 39). On the national side, it is indicated that, the two reimbursable loans from the United Nations notwithstanding, the national component is expected to face a significant pledging shortfall in 2014-2015, which in turn could result in further staff walkouts and disruptions of the judicial proceedings (ibid., para. 40).

12. **The Advisory Committee notes with concern the adverse cash position of the Extraordinary Chambers and the steadily worsening financial situation over the course of the past 18 months. While noting that the Secretary-General first alerted Member States to the funding problems in his report of September 2012 on the Khmer Rouge trials, the Committee is concerned that the severity of the funding shortfall is only now being brought to the attention of the appropriate committee of the General Assembly.**

IV. Resource requirements and request for a subvention to the Extraordinary Chambers

13. The Secretary-General indicates that the total resource requirements for the period from 1 January 2014 to 31 December 2015 amount to $58.8 million: $46.4 million for the international component and $12.4 million for the national component (A/68/532, para. 39) (see also paras. 24-28 below). To address the funding shortfalls, the Secretary-General is seeking the approval of the General Assembly for a subvention from the United Nations of up to $51.1 million for this period to cover the total resource requirements for the Extraordinary Chambers during this time. He is therefore proposing that the Assembly approve an additional appropriation of $24.8 million from the regular budget for 2014 and decide to

consider a subsequent report on a subvention of up to $26.3 million for 2015 at the main part of its sixty-ninth session.

14. Within the proposed overall subvention, $42.3 million would be for the costs of the international component, while $8.8 million would be in the form of reimbursable loans to the Government of Cambodia to cover the staff costs of the national component (A/68/532, paras. 41-42). The Advisory Committee notes that these figures do not reflect the outcome of the most recent pledging conference held on 7 November 2013.

15. With regard to the international component, the Secretary-General indicates that intensive fundraising efforts would continue and that the proposed subvention would be considered to be a reserve to allow for the issuance of staff contracts for up to a year and ensure the uninterrupted operation of the Extraordinary Chambers. He adds that the subvention would be drawn upon only on a monthly basis, should the level of extrabudgetary funds be insufficient to meet salary and operational costs. In addition, proposed drawdowns would require a detailed reporting of expenditure to the Controller and demonstrated need for future release of funds (ibid., para. 41).

16. **The Advisory Committee recommends that the General Assembly request the Secretary-General to intensify his efforts to obtain additional voluntary contributions, including by broadening the donor base for funding the future activities of the Extraordinary Chambers.**

17. The Advisory Committee notes that proposed staffing levels, both international and national, are set out in the annex to the report of the Secretary-General. In this regard, staffing for the international component is projected to decline from 169 staff in 2013 to 146 staff in 2015. The overall staffing for the national component is projected to decline from 283 staff in 2013 to 170 staff in 2015. In contrast, the budgetary requirements for the Defence Support Section are projected to increase significantly over the same period.

18. Given that the Extraordinary Chambers have been funded solely from voluntary sources for the entire eight years of their operation, the Advisory Committee has never previously expressed any observations or recommendations on the level of the proposed budget or related staffing levels. Furthermore, the report of the Secretary-General contains a request for a subvention, rather then a full-fledged budget proposal. Should it be approved by the General Assembly, the subvention would be offset by any voluntary contributions subsequently received by the Chambers. The Committee has therefore not reviewed the resource requirements for the Chambers, nor has it requested supplementary detail or explanatory justification in terms of the proposed staffing levels and grades or the amount of non-staff costs proposed during the course of its review.

19. **The Advisory Committee stresses that at this stage it has not yet performed a detailed examination of the estimates before it in terms of determining whether the staffing and budgetary requirements for the Extraordinary Chambers are properly justified for the period 2014-2015. Nevertheless, without prejudice to any future decisions taken by the General Assembly on the proposed subvention or any future financing modality (see para. 33), the Committee expects that, in the light of their difficult financial circumstances, the Chambers will intensify their efforts to identify savings and efficiencies.**

V. Case progress and management

20. Periodic reports of the Secretary-General have contained details concerning the progress of cases before the Extraordinary Chambers.[1] Section II of the most recent report provides the most up-to-date details on progress made. The Committee notes that only case 001, the first tried before the Chambers, has been concluded, with the Supreme Court Chamber rendering its decision on appeals on 3 February 2012. Cases 002, 003 and 004 are, according to the Secretary-General, at various stages of completion.

21. While the co-prosecutors have stated publicly that there will be no further cases after cases 003 and 004, the Secretary-General indicates that it is difficult to project the overall timeline for the completion of the court's work (A/68/532, para. 4). He also states that the indicative court schedule projects judicial activity until 2018, and possibly beyond (ibid., para. 38).

22. In this regard, the Advisory Committee notes that, at the time of their establishment, it was estimated that the Extraordinary Chambers would complete their work within three years from the time at which the Office of the Co-Prosecutors began operations. In his previous report on the Khmer Rouge trials, however, the Secretary-General indicated that that timeline had been underestimated, in part as a result of the complex dimensions of running a trilingual hybrid court (A/67/380, para. 57).

23. Furthermore, the Secretary-General stated in paragraph 57 of that report that it was impossible to determine the total financial support needed to complete the overall programme of work of the Extraordinary Chambers. **Irrespective of the decisions to be taken by the General Assembly on the future financing of the Extraordinary Chambers, the Advisory Committee recommends that a funding plan beyond 2014-2015 be developed, based on a rigorous forecast of the workload associated with the timely completion of the three remaining cases and the development and implementation of a disciplined case-management methodology.**

VI. Agreement between the United Nations and the Government of Cambodia

24. In his report, the Secretary-General indicates that, while the national component of the Extraordinary Chambers was for the most part funded during 2012, it experienced a serious shortfall in pledges for 2013, creating a crisis of greater severity than that of the international component (A/68/532, para. 31). Following an approach by the Secretariat to the Governments of Norway and Sweden to redirect their pledges from the international component to the national component, a reimbursable loan of $2.1 million was put in place early in 2013 (ibid., para. 32). That did not resolve the issue in the long term, however, and salaries were discontinued starting in June 2013, with more than 100 national staff going on strike on 1 September 2013 (ibid., para. 33). Two additional donors agreed to have their voluntary contributions redirected in support of the national component and, consequently, a second exceptional, reimbursable loan amounting to

[1] A/58/617, A/59/432 and Add.1, A/60/565, A/62/304 and A/67/380.

$1.2 million was made to the Government of Cambodia in order to secure the return of the national staff. Salary arrears, excluding those for judicial officials, were therefore settled up to the end of August 2013. The Secretary-General indicates, however, that no long-term solution to the funding crisis has been found and he remains concerned about the welfare of the staff and the risk that the Chambers will not be able to complete their work (ibid., para. 34).

25. Concerning the legal basis under which the Secretary-General made the two loans, the Advisory Committee was informed, upon enquiry, that the redirection by the Secretary-General of the voluntary contributions was governed by the agreements with the donors and, as such, for the donors concerned, the authority derived from their ultimate decision to have the funds used to ensure that the work of the Extraordinary Chambers was not disrupted.

26. Upon further enquiry, the Advisory Committee was informed that, because no new funding had emerged for the national component, the Secretariat attached no terms and conditions to the reimbursable loans, other than requiring that the funds be repaid when the Government of Cambodia had sufficient funds to do so. In this connection, the Committee notes that article 15 of the above-mentioned agreement between the Government and the United Nations provides that all salaries and emoluments of Cambodian judges and other Cambodian personnel shall be defrayed by the Government.

27. The Advisory Committee was also informed that, from 2005 to 2012, funding for national staff salaries had, in fact, been paid from trust fund balances relating to the United Nations Transitional Authority in Cambodia.[2] Funds amounting to $5.37 million had been approved for that purpose by donors. In addition, the Committee was informed that, although the Government of Cambodia had provided resources to cover other operational costs, it had not, in fact, been covering national staff costs since the inception of the Extraordinary Chambers.

28. **The Advisory Committee trusts that the Secretary-General will engage with the relevant authorities charged with the proper functioning of the national component to ensure that the terms of the above-mentioned agreement are properly observed.**

VII. Financing of judicial proceedings

29. The Secretary-General, in his first report on the Khmer Rouge trials, indicated that the costs of the Extraordinary Chambers would constitute an expense of the Organization under Article 17 of the Charter of the United Nations and should, in his view, be financed from assessed contributions (A/57/769, paras. 72-78). He added that the operation of a court should not be left to the vagaries of voluntary contributions, drawing on the experiences and lessons learned from the Special Court for Sierra Leone, which had experienced difficulties in achieving a sustainable and predictable funding base to cover the costs of its operations. Nevertheless, as indicated in paragraph 2 of the present report, the General Assembly decided, in paragraph 3 of its resolution 57/228 B, that the expenses of the Chambers would be borne by voluntary contributions from the international community.

[2] Subfund of the Cambodia Trust Fund; Trust Fund for the Repatriation of Cambodian Refugees and Displaced Persons; and subfund of the Voluntary Fund for the Cambodian Peace Process.

30. With regard to the financing arrangements for the Special Court for Sierra Leone, an entity broadly comparable to the Extraordinary Chambers, the Advisory Committee notes that the Court, created pursuant to Security Council resolution 1315 (2000), was also to be funded through voluntary contributions, but has since become reliant on a series of subventions from the regular budget, the most recent being for $14 million, which was approved to cover its activities in 2013 by the General Assembly in paragraph 27 of section I of its resolution 67/246. In the context of considering that request for a subvention from the regular budget, the Committee made a general observation concerning the problems of sustaining voluntary contributions to finance judicial proceedings owing to the challenges encountered in attracting sustained and predictable donor support and the unpredictable length of time often required to complete judicial proceedings (A/67/648, para. 6).

31. Regarding the Extraordinary Chambers, the Advisory Committee notes that the Secretary-General has indicated in his letters to Member States that the voluntary funding mechanism of the Chambers is not sustainable and has encouraged the international community to bring the operations of the Chambers on to a secure financial footing (A/68/352, summary). Upon enquiry, the Committee was informed that, given the difficulties experienced during the past two years in operating the Chambers, the Secretariat had determined that a subvention was the only viable option to ensure financial stability. At the same time, in making his proposal for a subvention from the regular budget of the United Nations, the Secretary-General states that he proposes to preserve the extrabudgetary funding basis of the Chambers (ibid., para. 41), thereby maintaining it as a voluntarily funded body. **The Advisory Committee recalls its previous comments concerning the difficulties in sustaining voluntary contributions to finance judicial proceedings and the need to take into consideration the lessons learned from these experiences for future international tribunals and courts (A/67/648, para. 6).**

VIII. Conclusions and recommendations

32. In his report, the Secretary-General states that it is critical for the international community to ensure that the Extraordinary Chambers have the financial means required to ensure accountability for the crimes perpetrated during the former Khmer Rouge regime. suggesting that the financial failure of the court would, in his view, constitute a serious setback to the international community's fight against impunity (A/68/532, para. 45).

33. **Bearing in mind that the General Assembly decided to establish the Extraordinary Chambers on the basis of voluntary financing, it would be for the Assembly to decide, as a matter of policy, whether to finance the future activities of the Chambers through a different source of funding.**

34. **In view of the projected funding shortfall in both international and national components for 2014, the fluid nature of outstanding pledges and commitments and the urgent need for resources to ensure the continued operations of the Extraordinary Chambers, the Advisory Committee recommends that the General Assembly:**

(a) **Authorize the Secretary-General to enter into commitments in an amount not to exceed $12.4 million for the period from 1 January to**

31 December 2014 for the Chambers as a bridging financing mechanism, pending consideration by the Assembly of the future financing of the Chambers, and request the Secretary-General to report on the use of the commitment authority during the main part of its sixty-ninth session;

(b) Comprehensively examine the matter of the future financing of the Chambers for 2015 and beyond no later than the main part of the sixty-ninth session;

(c) Request the Secretary-General to disclose details concerning the use of the commitment authority for 2014 in the first performance report of the United Nations for the biennium 2014-2015.

35. **The commitment authority, which amounts to 50 per cent of the request of the Secretary-General in 2014, would be pending receipt of contributions, including voluntary contributions from donors, to the Extraordinary Chambers, so that the Chambers can make progress towards completing their work. Should contributions be received in excess of the overall requirements for 2014, such amounts should be refunded to the Organization.**

36. **The Advisory Committee stresses that its recommendation in the preceding paragraph is made on the basis that:**

(a) Should voluntary contributions be received in excess of the remaining requirements for the Extraordinary Chambers for 2014, any regular budget funds provided to the Chambers for this period would be refunded to the United Nations;

(b) Appropriate measures for achieving operational savings and efficiencies in the Chambers are in place (see para. 19);

(c) The Secretary-General intensifies his efforts to seek voluntary contributions (see para. 16);

(d) Appropriate monitoring and reporting arrangements are in place to ensure an incremental release of funds to the Chambers, based on the monthly cash position;

(e) A funding plan beyond the period 2014-2015 is developed, based on a rigorous forecast of the workload associated with the timely completion of the three remaining cases and the development and implementation of a disciplined case-management methodology (see para. 23).

Annex

Summary of outstanding and tentative pledges (revalued as at 8 November 2013)

(United States dollars)

	Pledges made in support of the international component		*Pledges made in support of the national component*	
Member State	*2013 quarter 4*	*2014 quarter 1-quarter 2*	*2014*	*2015*
Cambodia			1 700 000	1 600 000
United Kingdom of Great Britain and Northern Ireland (£100 000)	159 744			
Germany (EUR 700 000)		938 338		
United States of America	800 000	4 150 000		
Sweden (Skr 7 000 000)	1 045 556			
Finland (EUR 1 145 000)	1 534 853			
Denmark (Dkr 8 000 000)	1 437 298			
Liechtenstein (SwF 30 000)	32 644			
Total	**5 010 095**	**5 088 338**	**1 700 000**	**1 600 000**